

## **I PROCEDURAL SAFEGUARDS: REGARDING SURROGATES, NOTICE, AND CONSENT**

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. This document addresses provisions of IDEA regarding the alignment between IDEA and No Child Left Behind, referred to in this document as the Elementary and Secondary Education Act (ESEA) of 1965, which will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

### **IDEA 2004:**

#### **1. Adds to the procedures for the appointment of a surrogate parent.**

In the case of a child who is a ward of the state, a surrogate parent may alternatively be appointed by the judge overseeing the child's care, provided that the surrogate meets the requirements of Section 615(b)(2). [615(b)(2)(A)(i)]

In the case of an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11434a(6)], the local educational agency (LEA) shall appoint a surrogate in accordance with Section 615(b)(2). [615(b)(2)(A)(ii)]

The state shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate. [615(b)(2)(B)]

#### **2. Revises requirements regarding the provision of procedural safeguards notice to parents.**

A copy of the procedural safeguards ... shall be given to the parents only one time a year, except that a copy also shall be given to the parents:

- Upon initial referral or parental request for evaluation;
- Upon the first occurrence of the filing of a complaint under Section 615(b)(6); and
- Upon request by a parent.

Internet Web site--An LEA may place a current copy of the procedural safeguards notice on its internet Web site if such Web site exists. [615(d)(1)(A-B)]

#### **3. Adds to required notice content, requirements for due process hearing requests, and civil actions, including:**

- The time period in which to make a complaint;
- The opportunity for the agency to resolve the complaint;
- The availability of mediation; and
- The time period in which to file civil actions.

[615(d)(2)(E) and (K)]

#### **4. Outlines the method of providing notices required under Section 615.**

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available. [615(n)]

#### **5. Specifies that LEAs may not use Section 615 remedies to obtain consent for services.**

If the parent of a child [with a disability] refuses to consent [to special education and related services], the LEA shall not provide special education and related services to the child by utilizing the procedures described in Section 615. [614(a)(1)(D)(ii)(II)]

If the parent of such child refuses to consent to the receipt of special education and related services, or if the parent fails to respond to a request to provide such consent:

- The LEA shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the LEA requests such consent; and
- The LEA shall not be required to convene an individualized education program (IEP) meeting or develop an IEP under this section for the child for the special education and related services for which the LEA requests such consent.

[614(a)(1)(D)(ii)]

#### **6. Mandates consent for wards of the state.**

If the child is a ward of the state and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in Section 602) of the child for an initial evaluation to determine whether the child is a child with a disability. [However,] the agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if:

- Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law, and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

[614(a)(1)(D)(iii)]